

In the Matter of Merchant Mariner's Document No. Z-580915
Issued to: AUGUSTO BENTINE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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AUGUSTO BENTINE

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 16 September, 1949, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-580915 issued to Augusto Bentine upon finding him guilty of "misconduct" based upon four specifications alleging in substance, that while serving on board the American SS LAGUARDIA as a porter, under authority of the document above described, on or about 2 September, 1949, while said ship was in the port of Naples, Italy, he did:

"Fourth Specification: * * * use indecent and profane language in the presence of a passenger, one Louis Di Angelo and his three nieces * * *.

Fifth Specification: * * * improperly accost a niece of one Louis Di Angelo, a passenger, * * *.

Sixth Specification: * * * threaten to do bodily harm to one Louis Di Angelo, a passenger of said ship, without reasonable cause * * *.

Seventh Specification: * * * assault one Anna Di Angelo, a visitor of the ship, without reasonable cause * * *."

The first three specification dealt with another incident on a different date and were dismissed by the Examiner since Appellant had previously been admonished by the Investigating Officer for the acts alleged therein. Consequently, there is no need to consider them in this proceeding.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and the four specifications.

After the Investigating Officer and Appellant had completed their opening statements, the Investigating Officer introduced in

evidence the testimony of two witnesses, Di Angelo and the third cook. He then rested his case.

In defense, Appellant testified, under oath, in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of specifications Nos. 4, 5, 6 and 7, and entered an order revoking Appellant's Merchant Mariner's Document No. Z-580915 and all other documents, certificates and licenses issued to him.

From that order, this appeal has been taken, and it is urged that:

POINT 1. Di Angelo's testimony as to the behavior of the other two girls, in view of his testimony that Appellant struggled with Anna Di Angelo for 20 minutes, makes his testimony improbable, exaggerated or false.

POINT 2. The failure of the police to report the incident to the Master indicates that the offense was not a serious one. Di Angelo's testimony as to whether the police were present at the scene is confusing and contradictory.

POINT 3. Di Angelo's testimony as to what Appellant said to the girl is confusing and contradictory.

POINT 4. The Investigating Officer asked Di Angelo leading questions and he addressed misleading questions to Appellant.

POINT 5. The official ship's log shows that the incident was first reported to the chief mate approximately 24 hours after it occurred. Why was there such a long delay if the offense was so serious?

POINT 6. It is improbable that Appellant threatened to injure Di Angelo if he "squealed" on him. There were at least ten other witnesses to the incident who could have reported it.

POINT 7. Di Angelo testified, "Maybe he forget. Maybe he was drunk. I don't know." Was Di Angelo here defending Appellant or himself?

POINT 8. The details are not clear as to whether the girls were walking with Di Angelo, what Appellant said to Di Angelo and how Appellant could have held the girl for 20 minutes if the third cook separated them at one point.

POINT 9. Di Angelo shows by his testimony that he only assumes that the language used by Appellant was bad. An uneducated man like Appellant often uses vulgar language. Even so, the girl could not understand the English language.

Appellant has a good record and heavy family obligations. The charges must be proved

beyond a reasonable doubt and there is grave doubt here as to exactly what occurred even if the testimony of Di Angelo alone is considered. This results from his faulty English, his prejudice in the case and other motives.

For these reasons, it is requested that the order imposed on Appellant be lessened by providing for a suspension in lieu of revocation.

APPEARANCES: Stanley P. Danzig, Esq. of New York City

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 2 September, 1949, Appellant was serving as a porter on the American SS LAGUARDIA, under authority of his Merchant Mariner's Document No. Z-580915 while the ship was in the port of Naples, Italy.

On this date, Louis Di Angelo, a passenger on the SS LAGUARDIA, had his three nieces aboard the ship as guests. At approximately 1730, he was escorting his nieces to the gangway, on the starboard after side of "B" deck, which was used jointly by tourist class passengers and the members of the crew. There were about five negro crew members in the vicinity of each side of the gangway. This group included the third cook who was one of the Investigating Officer's witnesses.

Appellant had just returned on board the ship. He had been drinking a "few" beers and some wine. He saw the three girls approaching and thought that he knew the one named Anna Di Angelo who was 22 years old. So he called to her, "Vene ca," which is Italian for "Come here." Then Appellant walked over to her and put his hand on her arm as she was passing. He asked her to come into his room. Then Di Angelo, the girl's uncle, came up to Appellant and started a heated argument with him while Appellant continued to hold the girl. Appellant called Di Angelo a foul name and other names which sounded "bad" to Di Angelo. Appellant said he liked the girl and would take her to his room. Di Angelo pleaded and argued with Appellant to let the girl go. Appellant could not understand much of what Di Angelo was saying because, due to his excitement, the latter was talking in a mixture of the English and Italian languages. When they reached the gangway, Di Angelo told the other two girls to continue down the gangway to the dock and they did so.

The third cook had been observing all this and he attempted to intervene, telling Appellant that he was going to get in trouble. Appellant became angry with the cook and told him to get out of the way because he intended to have this girl. When the cook realized that Appellant might start a fight with him, he retired.

Since Appellant still refused to release his niece, Di Angelo left and summoned the Italian police. He did this while the cook was attempting to reason with Appellant. When Appellant saw the police coming, he released the girl and disappeared. Anna joined the other two girls who had been waiting on the dock. These events had transpired during a period of about ten or fifteen

minutes.

Di Angelo then went to his room to dress. About 15 minutes later, Appellant entered Di Angelo's cabin and threatened to cut his throat if he reported the incident. Di Angelo reported it that night to the radio operator who did not further report it. The next day, Di Angelo told his story to the Master and later identified Appellant from various crew members brought before him. Appellant was handcuffed and put in the brig. His pay was stopped for eleven days.

The ship had gotten underway about an hour and half after the incident took place and the police had made no report of it to the Master or other officers on board.

Appellant's only prior disciplinary record with the Coast Guard is the admonition received with respect to the first three specifications which were discharged.

OPINION

Appellant's contentions on appeal are based on the premise that the charges have not been proven beyond a reasonable doubt because the evidence is confusing, contradictory, improbable and vague.

First, let it be stated again that the necessary degree of proof required in these proceedings is that the decision must be supported by "substantial" evidence rather than by proof "beyond a reasonable doubt." This action is being taken under a remedial statute and, consequently, the requisites of proof are different than they are in a penal action. It is sufficient that there be enough evidence pointing in one direction for a reasonable man to draw the inference of fact sought to be established by the specifications. Baltimore and Ohio Railroad Co. v. Postom (C.C.A., D.C., 1949), 177 F. 2d 53.

Admittedly, the testimony of the witness Di Angelo is slightly confusing due to his poor command of the English language; and there are contradictions in the testimony of the three witnesses. Nevertheless, it is clearly established by Appellant's own testimony that he did lay his hand on the girl's arm after having called to her and that he did engage in a heated argument with Di Angelo. Considered together with the testimony of the other witnesses bearing on these points, it is my opinion that there is substantial evidence to support the fourth, fifth and seventh specifications.

Appellant specifically contends that Di Angelo's testimony was confusing and contradictory with respect to whether the police were present at the scene all the time or whether Di Angelo left to get them (Point 2); and that Di Angelo's answers as to what Appellant said to the girl were confusing (Point 3).

It is not clear from the testimony just where Di Angelo located the police to assist him. But the evidence certainly indicates that Di Angelo was in such fear for the safety of his niece that he sought the aid of the Italian police in order to force Appellant to release the girl. It seems unlikely

that the police were in the immediate vicinity of the gangway before their help was requested by Di Angelo. If they had been, they very probably would have taken appropriate action without having been requested by Di Angelo to do so.

Although Di Angelo's testimony is confusing as to what Appellant said to the girl, he did testify that Appellant first told her to "come here" and then told her to come into his room. The first statement was made when Appellant first saw the three girls but the latter statement took place after he had caught hold of her arm. This is corroborated by the third cook's testimony that Appellant said he intended to have this girl.

Appellant also urges that it is improbable there was such a scene as depicted by Di Angelo since, if there had been, the other two girls would have set up a "hue and cry" which would have brought assistance from the crew members and others who were in the vicinity of the gangway (Point 1); and that it is improbable Appellant threatened Di Angelo since there were at least ten other witnesses to the incident who could have reported Appellant's behavior to the Master (Point 6).

As has been found, it seems perfectly logical that the other two girls should have continued quietly on their way to the dock. They probably did not comprehend what was happening because they did not speak English and probably could not understand what Appellant had said to the other girl. In view of the fact that there is no evidence of a noisy struggle or any attempt on Appellant's part to force the girl toward his room to carry out his intentions, it is understandable why Appellant's shipmates did not interfere. They must have realized that Appellant would have assumed the same belligerent attitude towards them as he had with the third cook. As long as no physical damage was being done, there was no reason why they should jeopardize their own position by engaging in a fight with Appellant.

The fact that at least ten members of the crew witnessed the incident does not make it improbable that Appellant threatened to cut Di Angelo's throat if he reported the events to the Master. It is not likely that another crew member would assume the responsibility of bringing such an incident to the Master's knowledge. The primary responsibility logically rested on the interested party - Di Angelo. Undoubtedly, Appellant thought that the Master would never hear about it unless reported to him by Di Angelo. Hence, the testimony of Di Angelo that Appellant threatened him is sufficient to uphold the allegations contained in the sixth specification.

Appellant contends that the evidence is vague as to whether the girls were walking with Di Angelo, as to what kind of language Appellant used to Di Angelo, and as to how Appellant held the girl even though the third cook separated them (Points 8 and 9).

The evidence clearly establishes the fact that Di Angelo was escorting the three girls to the gangway. Consequently, it is evident that he must have been close to them and obviously associated with them. But this fact in itself is not material to the outcome.

Although vague as to the exact words used by Appellant, Di Angelo testified emphatically

that Appellant had used very vulgar and profane language while addressing him. The fact that Appellant is an uneducated man does not justify his using such language in an argument with one of the passengers on board the ship.

The evidence does not establish that the cook was successful in his attempt to persuade Appellant to release the girl. Rather, the indication is that he attempted to do so but that he was completely unsuccessful.

It is urged that the offense could not have been of a very serious nature because the Italian police did not report it to the Master of the ship (Point 2) and the ship's log shows that the incident was not reported to the chief mate until twenty-four hours after it had happened (Point 5).

The police had no knowledge as to what had taken place except what Di Angelo had told them when he sought their assistance. On the basis of this information alone, they were not in a position to make any complaint to the Master. And even if they had witnessed the incident, they would have had no reason to do more than force Appellant to release the girl. They had no jurisdiction to apprehend Appellant so long as he was on an American ship.

Di Angelo testified that he reported the incident to the radio operator the same night it occurred. And the radio operator indicated that he would relay the message to the Master. After repeated attempts to get the radio operator to take care of the matter, Di Angelo finally reported it to the proper authorities himself. His persistency in this respect certainly shows that he considered Appellant's actions to have been extremely offensive.

Appellant also objects to the use of the word "struggle" by the Investigating Officer in questioning the witness Di Angelo and to the words "the girls broke away" in the Investigating Officer's cross-examination of Appellant (Point 4). Appellant is correct in his statement that such words were injected into the record by the Investigating Officer without having previously been used by the witnesses in reply to questions asked them. But there was no objection raised to the use of these words at the time and, even if there had been such objection, they would not constitute reversible error since they are not of significant prejudice to Appellant's cause.

Appellant raised the question as to whether Di Angelo was defending himself or Appellant when he testified, after having identified Appellant: "Maybe he forget. Maybe he was drunk. I don't know." (Point 7). This point, as stated, is too obscure to permit a reasonable understanding of what is intended.

CONCLUSION

The evidence conclusively establishes the allegations contained in the fourth, fifth, sixth and seventh specification. Appellant's behavior was a serious infraction of the discipline which must be maintained on American merchant marine vessels. For this reason, as well as for those reasons set out in the Examiner's opinion, the order of revocation must be sustained rather than changed to a suspension as requested by Appellant.

ORDER

The Order of the Examiner dated 16 September, 1949, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 8th day of February, 1950.